

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

DONALD DURRANT FARROW,	)	
	)	
Petitioner,	)	
	)	
v.	)	1:20CV439
	)	
WARDEN AMENDA COBB,	)	
	)	
Respondent.	)	

**ORDER**

This matter is before this court for review of the Recommendation filed on May 18, 2020, by the Magistrate Judge in accordance with 28 U.S.C. § 636(b). (Doc. 2.) In the Recommendation, the Magistrate Judge recommends that the Petition be dismissed for failure to apply to the United States Court of Appeals for the Fourth Circuit for an order authorizing this district court to consider the current Petition as is required by 28 U.S.C. § 2244. The Recommendation was served on the parties to this action on May 18, 2020, (Doc. 3). Petitioner timely filed objections, (Doc. 5), to the Recommendation. Petitioner also filed a motion seeking the recusal of the Magistrate Judge, (Doc. 4).

This court is required to "make a de novo determination of those portions of the [Magistrate Judge's] report or specified

proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1). This court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the [M]agistrate [J]udge. . . . [O]r recommit the matter to the [M]agistrate [J]udge with instructions." Id.

The court has considered Petitioner's objections, (Doc. 5), and his motion seeking recusal of the Magistrate Judge, (Doc. 4). Neither pleading has merit. So far as the court can understand Petitioner's motion, (Doc. 4), it requests that the Magistrate Judge be removed from this matter because, in his Recommendation, the Magistrate Judge described Petitioner's Petition as "rambling." (Id.) However, this was a fair description of the Petition and, beyond this, the adjective the Magistrate Judge used to describe the Petition had no impact on the Magistrate Judge's accurate assessment that the Petition should be dismissed for failure to apply to the United States Court of Appeals for the Fourth Circuit for an order authorizing this court to consider the current Petition as is required by 28 U.S.C. § 2244. To the extent Petitioner is trying to set forth additional reasons why the Magistrate Judge should be removed from this matter (such as the existence of a prior or pending appeal in another case), they are not persuasive.

This court has appropriately reviewed the portions of the Recommendation to which objections were made and has made a de novo determination which is in accord with the Magistrate Judge=s Recommendation. This court therefore adopts the Recommendation.

**IT IS THEREFORE ORDERED** that the Magistrate Judge's Recommendation, (Doc. 2), is **ADOPTED. IT IS FURTHER ORDERED** that Petitioner's document in which he appears to attack his state court criminal conviction, (Doc. 1), is construed as a Petition under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody, and that this action is hereby **DISMISSED WITHOUT PREJUDICE** for failure to apply to the Fourth Circuit Court of Appeals for an order authorizing this district to consider the current petition as is required by 28 U.S.C. § 2244.

**IT IS FURTHER ORDERED** that Petitioner's motion for recusal, (Doc. 4), is **DENIED**.

A Judgment dismissing this action will be entered contemporaneously with this Order. Finding no substantial issue for appeal concerning the denial of a constitutional right affecting the conviction, nor a debatable procedural ruling, a certificate of appealability is not issued.

This the 28th day of September, 2020.

*William L. Ostun, Jr.*  
\_\_\_\_\_  
United States District Judge